

AMENDED IN SENATE JUNE 17, 2002

AMENDED IN SENATE MAY 16, 2002

## Senate Constitutional Amendment

**No. 7**

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**Introduced by Senators Burton and McPherson  
(Coauthor: Senator Bowen)**

(Coauthors: Assembly Members Keeley, Kehoe, Leonard, Papan,  
and Shelley)

January 10, 2002

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Senate Constitutional Amendment No. 7—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 3 of Article I thereof, relating to access to government information.

### LEGISLATIVE COUNSEL'S DIGEST

SCA 7, as amended, Burton. Access to government information.

The California Constitution provides that the people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good. Various provisions of existing law, including, among others, the California Public Records Act, ~~The~~ *the* Legislative Open Records Act, the Bagley-Keene Open Meeting Law, and the Ralph M. Brown Act, provide, with some exceptions, for public access to government records and meetings of government bodies.

This measure would provide that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. It would provide that, except as otherwise provided in the California Constitution, the people have a right to attend, observe, and be heard in the meetings of elected and

appointed public bodies, and to inspect and obtain copies of records made or received in connection with the official business of any public body, agency, officer, or employee, or anyone acting on behalf of a public body, agency, officer, or employee.

This measure also would provide that ~~these provisions may not be construed to supersede~~ *nothing in its provisions supersedes* the right to privacy guaranteed by the California Constitution, or ~~to limit~~ *limits* the ability of the Legislature to provide by statute, or the Judicial Council to provide by rule not inconsistent with statute, for the protection of ~~government information about a person unless the information relates to the qualifications of a candidate or applicant for, or qualifications or performance of a holder of, any elective or appointive government office, as specified~~ *personal privacy*. It also

*The measure would also permit the Legislature to provide by statute and Judicial Council to provide by rule for other limitations on the right of public access to governmental meetings and records information concerning the conduct of the people's business solely to protect public safety or private property, to ensure the fair and effective administration of justice law, or to provide for the preservation of preserve public funds and resources. It would provide that an application of any of these limitations by any public body, agency, officer, or employee, or anyone acting on behalf of a public body, agency, officer, or employee to deny a right under these provisions shall be based on particularized findings that a specified harm to the public interest cannot be averted by a reasonable alternative, unless the information sought is a confidential communication between an attorney and his or her client conveyed to provide or obtain legal advice or representation.*

This measure would establish special procedures for access to peace officer personnel records ~~and~~. *It would also provide that it does not apply to its provisions shall not affect public access to certain* judicial proceedings or *the records of judicial proceedings*.

The measure would provide that existing statutes and rules of court limiting public access to ~~governmental meetings and records will~~ *information concerning the conduct of the people's business shall* remain in effect, until, and except to the extent that, they are amended, repealed, or judicially determined to be inconsistent with a ~~provision of~~ this measure.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring, That the*  
2 *Legislature of the State of California at its 2001–02 Regular*  
3 *Session commencing on the fourth day of December 2001,*  
4 *two-thirds of the membership of each house concurring, hereby*  
5 *proposes to the people of the State of California that the*  
6 *Constitution of the State be amended by amending Section 3 of*  
7 *Article I thereof, to read:*

8 SEC. 3. (a) The people have the right to instruct their  
9 representatives, petition government for redress of grievances,  
10 and assemble freely to consult for the common good.

11 (b) (1) Access to information concerning the conduct of the  
12 people's business is a fundamental and necessary right of every  
13 person in this State. Public agencies and officers exist to aid in the  
14 conduct of the people's business, and their actions and  
15 deliberations ~~should~~ *shall* be open to public scrutiny. Therefore,  
16 except as provided pursuant to this Constitution, the people have  
17 a right to attend, observe, and be heard in the meetings of elected  
18 and appointed public bodies, and to inspect and obtain copies of  
19 records made or received in connection with the official business  
20 of any public body, agency, officer, or employee, or anyone acting  
21 on behalf of a public body, agency, officer, or ~~employee, including~~  
22 *employee. For purposes of this subdivision, information*  
23 *concerning the conduct of the people's business includes, but is not*  
24 *limited to, information regarding the official performance or*  
25 *professional qualifications of elected or officials, or of appointed*  
26 *officials who have, or appear to the public to have, substantial*  
27 *responsibility for, or control over, the conduct of governmental*  
28 *affairs.*

29 ~~(2) (A) affairs, and information regarding the professional~~  
30 ~~qualifications of candidates or applicants for these elective or~~  
31 ~~appointive positions. When a request seeks information~~  
32 ~~concerning the official performance or professional qualifications~~  
33 ~~of a person appointed as a peace officer consisting of personnel~~  
34 ~~records maintained under the officer's name by a public agency,~~  
35 ~~any adjudication of the request shall conform to any statutory~~  
36 ~~procedures enacted to protect the safety or privacy of peace~~  
37 ~~officers. If the request is made in a disclosure proceeding in the~~  
38 ~~public interest rather than in a criminal prosecution or an action for~~  
39 ~~damages, the plaintiff shall bear the initial burden of~~  
40 ~~demonstrating that the information is material to the public interest~~

~~1 in monitoring the supervisory responsibility of the employing  
2 agency and that nondisclosure of the information would  
3 substantially undermine the public's ability to monitor the conduct  
4 of the employing agency.~~

~~5 (B) Peace officer personnel records ordered disclosed in a  
6 public interest proceeding are not admissible as evidence in an  
7 action for damages or a criminal prosecution unless the court finds  
8 that admissibility is required by due process of law.~~

~~9 (3) Privacy also being a fundamental right of the people of this  
10 State, this section may not be construed to do either of the  
11 following:~~

~~12 (A) Supersede the right to privacy guaranteed by Section 1 of  
13 Article I.~~

~~14 (B) Limit peace officer, any adjudication of the request shall  
15 comply with any procedure governing discovery or disclosure  
16 enacted by the Legislature by statute.~~

~~17 (2) Nothing in this subdivision supersedes the right to privacy  
18 guaranteed by Section 1 or limits the ability of the Legislature to  
19 provide by statute, or of the Judicial Council to provide by rule not  
20 inconsistent with statute, for the protection of information about  
21 a person submitted to, or obtained by, any public body, agency,  
22 officer, or employee, or anyone acting on behalf of a public body,  
23 agency, officer, or employee, except to the extent that the  
24 information relates to the qualifications of a candidate or applicant  
25 for, or the qualifications or performance of the holder of, any  
26 elective or appointive office in government that has, or appears to  
27 the public to have, substantial responsibility for, or control over,  
28 the conduct of governmental affairs.~~

~~29 (4) personal privacy.~~

~~30 (3) The Legislature may provide by statute, and the Judicial  
31 Council may provide by rule not inconsistent with statute, for other  
32 limitations on the right of public access to governmental meetings  
33 and records access to information concerning the conduct of the  
34 people's business solely to protect public safety or private  
35 property, to ensure the fair and effective administration of justice  
36 law, or to provide for the preservation of preserve public funds and  
37 resources. Any application of a limitation by any public body,  
38 agency, officer, or employee, or anyone acting on behalf of a  
39 public body, agency, officer, or employee, to deny rights specified  
40 in paragraph (1) shall be based on particularized findings that there~~

1 ~~is a substantial probability of serious harm to the public interest~~  
2 ~~that the denial will avert, and that this harm cannot otherwise be~~  
3 ~~averted by reasonable alternatives, and shall be no broader in scope~~  
4 ~~or longer in duration than necessary to avert the identified harm.~~

5 ~~(5) Except as provided in subparagraph (B) of paragraph (2),~~  
6 ~~this subdivision does not apply to judicial proceedings or records.~~

7 *(4) Any application of a limitation authorized under paragraph*  
8 *(3) by any public body, agency, officer, or employee, or anyone*  
9 *acting on behalf of a public body, agency, officer, or employee, to*  
10 *deny a right specified in paragraph (1) shall be based on*  
11 *particularized findings that a specified harm to the public interest*  
12 *cannot be averted by a reasonable alternative, unless the*  
13 *information sought is a confidential communication between an*  
14 *attorney and his or her client conveyed to provide or obtain legal*  
15 *advice or representation. A denial of a right specified in paragraph*  
16 *(1) based on particularized findings may not be broader in scope*  
17 *or duration than necessary to avert the specified harm.*

18 *(5) This subdivision shall not affect public access to judicial*  
19 *proceedings or the records of judicial proceedings.*

20 ~~(6) All statutes and rules of court limiting public access to~~  
21 ~~governmental meetings and records access to information~~  
22 ~~concerning the conduct of the people's business that are in effect~~  
23 ~~on the operative date of this subdivision shall remain in force until,~~  
24 ~~and except to the extent that, they are amended, repealed, or~~  
25 ~~judicially determined to be inconsistent with a provision of this~~  
26 ~~subdivision.~~

